IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5405 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMAN TUKARAM YADAV (MARATHI)

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

MR SATISH R PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/02/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for learned Advocate Mr.S.R. Patel for the petitioner and learned A.G.P. Mr. A.J. Desai, on behalf of the

respondents nos.1, 2 and 3.

1. The detention order dated 31-5-1999 passed by the Commissioner of Police, Ahmedabad (the respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner -detenu under Sec.9(1) of "PASA" , copy of which is produced at running page 14 inter alia indicate that in all eleven prohibition cases are filed against the petitioner at Amraiwadi Police Station between the period from 13-8-1997 and 28-5-1999 That in each case countrymade liquor has been seized from the possession of the petitioner. That out of the said eleven cases, four cases are pending for trial in Court while the remaining cases are pending for investigation.

2.1 The grounds of detention further indicate that two witnesses on assurance of anonymity have given statements dated 29-5-19999 and 30-5-1999 respectively regarding bootlegging activities of the petitioner and have narrated the alleged incidents dated 9-5--1999 and 17-5-1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the petitioner was released on bail in a criminal case registered against the petitioner, however, detaining authority while passing the impugned order has failed to consider the less drastic remedy of opposing and/or claiming cancellation of bail under Sec.437(5) of the Cr.P.C., and as such, the impugned order suffers from the vice of non aplication of mind which vitiates the subjective satisfaction arrived at by the detaining authority and renders the impugned order bad in law.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134),

the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. On scrutiny of papers, it appears that the respondent no.1 as detaining authority has observed in the penultimate paragraph of the grounds of detention that the detenu would apply for bail and after getting himself released on bail is likely to indulge into antisocial activity which would be prejudicial to the maintenance of public order. The said observation suggests that before resorting to the provisions of "PASA" at no point of time, attempt has been made by the detaining authority to claim cancellation of bail as available under Sec.437(5) of the Cr.P.C. which has vitiated the subjective satisfaction and rendered the impugned order invalid.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 31-5-1999 passed by the Commissioner of Police, Ahmedabad (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Laxman Tukaram Yadav(Marathi) is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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